

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.
UD1864/2011
MN1914/2011
WT751/2011

EMPLOYEE *-claimant*

against

EMPLOYER *-respondent*
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Mr. C. McHugh
Ms M. Mulcahy

heard this claim at Dublin on 15th February 2013

Representation:

Claimant: Mr. Conor Dalton, Lockhart & Cleary, Solicitors,
7 Annesley Bridge Road, Fairview, Dublin 3

Respondent: In persons

Background:

The respondent is a public bar. The claimant worked as a part time lounge person. The claimant contends that at some point in the employment relationship she was no longer allocated hours.

Respondent's case:

The Tribunal heard evidence from the duty manager (JH) for the respondent. On or about 12:15 pm on Saturday 14th May 2011 he phoned the claimant as she was due to work and there was no answer. He phoned again a half hour later and at 2.00 pm and 3.00 pm and the phone rang out. He phoned her again on Monday 16th or Tuesday 17th and none of his calls were answered. He did not leave a voice mail as her phone rang out.

About two or three weeks later the claimant "stormed" into the premises and confronted him. He had nothing to say to her as she had left. He told her that he knew nothing of what had happened to her that she never told him that she had been sick and that she had not returned any of his calls. He told her that he could not have put her on the rota because he had not known if she was available. The claimant "stormed out".

In cross-examination it was put to the witness that the claimant contacted the assistant manager regarding the situation. The witness was not aware of this. He explained that he had tried to

contact her on four occasions and “what more” could he do.

The Tribunal heard evidence from the general manager (MH). He told the Tribunal that they had no issue with the claimant. He explained that he got a phone call from JH to tell him what had happened with the claimant. He told JH that he would phone the claimant, which he did. The claimant answered her phone and he asked her about what had happened and if they could meet. She told him that she was in the middle of something and that she would phone him later. A day passed and he phoned her again. He spoke to her and asked to meet. She told him no, that she did not want to talk.

Claimant’s case:

The Tribunal heard evidence from the claimant. She commenced working with the respondent in October 2008. She worked as a lounge girl on the till and carvery, for two days a week on Saturdays and Sundays up to 2011. She never had any issues with the respondent.

On Saturday 14th May she missed that day’s work because she was ill. She did note that JH had phoned her a few times but she had been asleep. She went in that week to check the rota. She did not think anything about the situation as she had missed a shift before. She had spoken to the assistant manager and he did say that he would try to put her on the rota.

When she met JH she did not storm into the premises. She asked JH why she had not been put on the rota. He told her that he could not put her on the rota because she had missed a day. He asked her if she was going to take the legal route.

She did speak to the general manager (MH) on the phone but she did not follow up on that. She did want to keep her job. She did not follow up because she felt that her job was gone and she did not feel comfortable going back to work there.

Determination:

The Tribunal are satisfied that every effort was made by the respondent to mediate the incident that occurred on the 14th May. However despite such efforts the claimant failed to engage in the process. No dismissal occurred. Accordingly, the claim under the Unfair Dismissals Acts, 1977 To 2007, must fail.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn on the day of the hearing.

The claim under the Organisation of Working Time Act, 1997, was withdrawn on the day of the hearing.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)